

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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2006 SEP 13 A 10:12

PATRICIA BURKETT, Administratrix
of the ESTATE OF JEREMY
BURKETT, deceased,
Plaintiff,

vs.

TIMOTHY EUGENE MCCRAY and
S.E. LUMBER COMPANY,

Defendants.

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1:06-CV-775-DRB

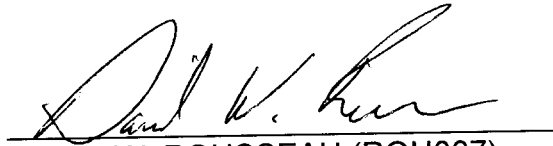
Motion for Leave to File Third Party Complaint

Comes now Timothy Eugene McCray, by and through the undersigned counsel and moves this Honorable Court for Leave to file a Third Party Complaint against the following entities: Central Mutual Insurance Company and Southern General Insurance Company. In support of this motion the undersigned would show unto the Court as follows:

1. The Defendant Counterclaim Plaintiff McCray was involved in a collision with Jeremy Burkett.
2. Your Defendant Counterclaim Plaintiff had received a tender of limits from the decedent's carrier based upon his stated fault in the accident report at the time the decedent's estate filed suit in the Circuit Court of Houston County.
3. The proposed third party defendants are contractually obligated to provide uninsured motorist benefits to this party if the decedent did in fact cause the accident.
4. The same facts concerning liability predominate in the original law suit, the counterclaim, and the proposed third party claims.
5. There are no novel or complex issues of state law.
6. Allowing the third party complaint would promote the interests of judicial economy in that the discovery in all the underlying claims are identical in terms of liability.
7. There are no exceptional circumstances or other compelling reasons for this Court to decline jurisdiction.

Based upon the preceding, the undersigned respectfully requests that this Honorable Court allow the undersigned to file the proposed Third Party claims attached to this pleading as exhibit "A".

Done and dated this the 12th day of September, 2006.



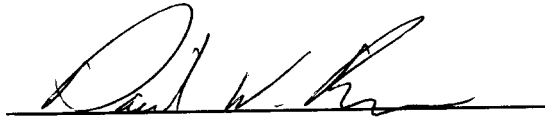
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Attorneys for Defendant,
Counterclaim and Third Party Plaintiff,
Timothy Eugene McCray

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing upon the following counsel by placing a copy of the same in the U.S. Mail, postage prepaid, and properly addressed this the 12th day of September, 2006.

David J. Harrison
Tommy R. Scarborough
P.O. Box 994
Geneva, AL 36340

William A. Mudd
505 N. 20th St.
1200 Financial Center
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BURKETT, deceased,
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TIMOTHY EUGENE MCCRAY, S.E.
LUMBER COMPANY
Defendants,

vs.

SOUTHERN GENERAL INSURANCE, and
THE CENTRAL MUTUAL INSURANCE
COMPANY,

Third Party Defendants.

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JURY TRIAL DEMANDED

THIRD PARTY COMPLAINT
OF DEFENDANT THIRD PARTY PLAINTIFF McCRAY

Defendant, Counterclaim and Third Party Plaintiff, Timothy Eugene McCray [hereinafter "McCray"] incorporated herein all of the assertions in the preceding paragraphs into this Complaint as if they were set out in their entirety.

JURISDICTION

1. The matter in controversy exceeds, exclusion of costs, ONE HUNDRED THOUSAND DOLLARS(\$100,000).
2. McCray is a resident of Damascus, Early County, Georgia.
3. Third Party Defendant Southern General Insurance is incorporated in and has its principle place of business in a state other than Alabama.
4. Third Party Defendant The Central Mutual Insurance is incorporated in and has its principal place of business in a state other than Alabama.

5. This Court has pendant matter jurisdiction of this claim under 28 U.S.C. § 1367 because the Defendant S.E. Lumber Company, a Georgia company, removed this matter from the Circuit Court of Houston County, Alabama based upon diversity pursuant to 28 U.S.C. § 1332.

COUNT ONE
UNDERINSURED MOTORIST CLAIM

6. On or about October 14, 2005, Plaintiff, Timothy Eugene McCray was safely and legally operating a 1995 Ford Pick-Up Truck for his employer in an easterly direction on Highway 52, near the intersection of County Road 33, in Houston County, Alabama.

7. On the same date and time, decedent Jeremy Joshua Burkett negligently or wantonly operated a 1993 Dodge Stealth in a westerly direction on Highway 52, near its intersection with County Road 33, in Houston County, Alabama.

8. Then and there, without any act on McCray's part, the decedent, Jeremy Joshua Burkett, pulled into the eastbound lane of travel on Highway 52 and struck the vehicle being operated by McCray, causing a head on collision.

9. The decedent, Jeremy Burkett, failed to maintain his lane; failed to maintain a proper lookout; and failed to exercise due care for the safety of others and by these failures caused the collision which resulted in injury to McCray.

10. Following the collision, McCray was taken by ambulance to the Southeast Alabama Medical Center where he was treated for severe bilateral lower extremities fractures. He has undergone extensive surgical treatment for his injuries and it is anticipated that he will incur future medical expenses.

11. Plaintiff has incurred extensive medical bills as a result of the hospitalization, treatment, surgeries and physical therapies necessitated by treatment for the injuries sustained in the collision caused by the decedent.

12. McCray has suffered lost wages due to the injuries he sustained in the collision. McCray was confined for a period of time to a wheel chair. He could not walk and thus could not work. Mr. McCray has not been able to work since the accident and his ability to return to reasonably gainful employment is doubtful.

13. As a result of the collision caused by Defendant's decedent, Plaintiff has endured physical pain and suffering in the past and in the present. It is anticipated that Plaintiff will endure pain and suffering in the future.

14. As a result of the collision caused by the Defendant's decedent, McCray has endured mental pain and anguish including nightmares and episodes of intense sweating. He has experienced interruption of his way of life as a result of the injuries he received in the crash.

15. At the time of the collision, decedent, Jeremy Burkett, was an underinsured motorist.

16. At the time of the collision complained of there existed an automobile insurance policy issued by Third Party Defendant Southern General Insurance Company which provided underinsured motorist coverage to McCray.

17. The automobile policy was in full force and effect at the time of the collision complained.

18. McCray has complied with all the terms and conditions of the Southern General Insurance policy.

19. McCray has made a claim for uninsured motorist benefits from Defendant Southern General Insurance Company.

WHEREFORE, McCray demands judgment against Third Party Defendant Southern General Insurance for uninsured motorist benefits to which he is entitled.

COUNT TWO UNDERINSURED MOTORIST CLAIM

20. McCray realleges and adopts the preceding paragraphs in to the complaint as if there were set out herein in their entirety.

21. At the time of the collision complained of, McCray was covered by an insurance policy issued by Defendant Central Mutual Insurance Company by virtue of his operation of a vehicle for his employer.

22. McCray received the injuries and damages previously alleged in the complaint.

23. Under the terms of the policy, Third Party Defendant Central Mutual Insurance Company agreed to pay personal injury damages that the McCray would be legally entitled to recover from an underinsured motorist.

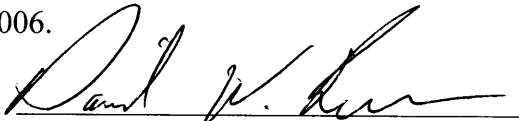
24. Said policy was in full force and effect at the time of the collision complained of.

25. McCray has complied with all the terms and conditions of the Central Insurance Company policy.

26. Plaintiff has made a claim for uninsured motorist benefits from Defendant Central Insurance Company.

WHEREFORE, Plaintiff demands judgment against the Defendant Central Insurance Company for the uninsured motorist benefits to which he is entitled.

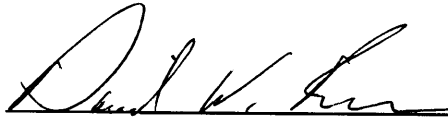
Dated this the 12th day of September, 2006.



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Attorneys for Defendant,
Counterclaim and Third Party Plaintiff,
Timothy Eugene McCray

JURY DEMAND

Defendant, Counterclaim and Third Party Plaintiff, Timothy Eugene McCray,
demands trial by jury.



David W. Rousseau

CERTIFICATE OF SERVICE

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following counsel by placing a copy of the same in the U.S. Mail, postage prepaid, and
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